88-1341

Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

SAN FERNANDO VALLEY NEIGHBORHOOD LEGAL SERVICES, as counsel to VERNICE DUBOSE, ET AL.,
Petitioner,
V.
JACK E. KEMP, SECRETARY OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Whether the Second Circuit can fail to give collateral estoppel effect to the final decision of the Ninth Circuit in Underwood v. Pierce, 761 F.2d 1344 (9th Cir. 1985), aff'd, 487 U.S. ___, 56 U.S.L.W. 4806 (1988), resulting in a contrary interpretation of the same settlement agreement negotiated in consolidated nationwide class actions.

2. Alternatively, if not collaterally estopped, whether the Second Circuit erred by interpreting a settlement agreement clause limiting miscellaneous settlement administration costs to bar an

award of attorney's fees under the Equal Access to Justice Act for settlement administration activities, notwithstanding its holding that a separate clause of the settlement agreement, specifically waiving a claims to attorneys fees from the settlement fund, did not bar such an award.

LIST OF PARTIES IN THE COURT BELOW

VERNICE DUBOSE, SUSAN DAIGLE, individually and on behalf of all others similarly situated,

CONNECTICUT LEGAL SERVICES, INC., SAN FERNANDO VALLEY NEIGHBORHOOD LEGAL SERVICES,
Petitioners,

v.

SAMUEL R. PIERCE, JR., individually and in his official capacity as Secretary of the U.S. Department of Housing and Urban Development; WINDHAM HEIGHTS ASSOCIATES, a limited partnership; ANTHONY ASSOCIATES, a general partnership; and SIMON KONOVER, individually and in his official capacity as a general partner in Windham Heights Associates and Anthony Associates,
Respondents.

CLAUDIA WALTER and DOMINICK CORTESE, individually and on behalf of all other persons similarly situated;

CONNECTICUT LEGAL SERVICES, INC., SAN FERNANDO VALLEY NEIGHBORHOOD LEGAL SERVICES,
Petitioners,

v.

SAMUEL R. PIERCE, JR., individually and in his official capacity as Secretary of the U.S. Department of Housing and Urban Development; CARABETTA ENTERPRISES, INC, a corporation organized and existing under the laws of the State of Connecticut, located in the Town of Meriden, County of New Haven, State of Connecticut,

Respondents.

JANETTE LITTLE, individually and on behalf of all others similarly situated;

CONNECTICUT LEGAL SERVICES, INC., SAN FERNANDO VALLEY NEIGHBORHOOD LEGAL SERVICES,

Petitioners,

v.

SAMUEL R. PIERCE, JR., individually and in his official capacity as Secretary of the U.S. Department of Housing and Urban development; RICHARD BROWN, individually and in his capacity as part-owner of East Hartford Estates; OAK MANAGEMENT CO., INC., a Connecticut Corporation; LOUIS BROWN, individually and in his capacity as part-owner of East Hartford Estates,

Respondents.

CATHY ADAMS, SHEILA CAQETTE, BARBARA LITTLEJOHN and HAZEL FRENCH, individually and on behalf of all others similarly situated;

CONNECTICUT LEGAL SERVICES, INC., SAN FERNANDO VALLEY NEIGHBORHOOD LEGAL SERVICES,
Petitioners,

v.

SAMUEL R. PIERCE, JR., individually and in his official capacity as Secretary of the U.S. Department of Housing and Urban Development; BRANFORD MANOR ASSOCIATES, BAY MANAGEMENT CORPORATION, MARVIN S. GOLD, ANNETTE E.P. GOLD, MILTON A. BERNBLUM, JOHN J. GROVES, and BURTON LEVY, individually and as general partners in Branford Manor Associates,
Respondents.

MERRY ELLEN GRUNDMAN, individually and on behalf of all others similarly situated,

CONNECTICUT LEGAL SERVICES, INC., SAN FERNANDO VALLEY NEIGHBORHOOD LEGAL SERVICES,
Petitioners,

v.

SAMUEL R. PIERCE, JR., individually and in his capacity as Secretary of the U.S. Department of housing and Urban Development; JOHN ERRICHETTI, individually and in his capacity as

owner of Highwood Apartments; CREATIVE MANAGEMENT & REALTY, A Connecticut Corporation,
Respondents.

JOANN JOHNSON and FRANK JOHNSON, individually and on behalf of all others similarly situated,

CONNECTICUT LEGAL SERVICES, INC., SAN FERNANDO VALLEY NEIGHBORHOOD LEGAL SERVICES,
Petitioners,

v.

SAMUEL R. PIERCE, JR., individually and in his capacity as Secretary, U.S. Department of Housing and Urban Development; WILLIAM H. HERNANDEZ, JR., individually and in his capacity as Manager for Connecticut for the U.S. Department of Housing and Urban Development and RIPPS REALTY, INC.,
Respondents.

MAY PLEASANT, individually and on behalf of others similarly situated;

CONNECTICUT LEGAL SERVICES, INC., SAN FERNANDO VALLEY NEIGHBORHOOD LEGAL SERVICES,
Petitioners,

v.

SAMUEL R. PIERCE, JR., Secretary of the U.S. Department of Housing and Urban Development; TUSCAN BROTHERHOOD HOMES, INC., A Connecticut corporation,
Respondents.

PANTALEON MORALES, YLDA LADSON and MARGARET WILLIAMS, individually and on behalf of those similarly situated;

CONNECTICUT LEGAL SERVICES, INC., SAN FERNANDO VALLEY NEIGHBORHOOD LEGAL SERVICES,
Petitioners,

v.

SAMUEL R. PIERCE, JR., individually and in his capacity as Secretary of the U.S. Department of Housing and Urban Develpment; WILLIAM H. HERNANDEZ, JR., individually and in his capacity as Manager for Connecticut for the U.S. Department of Housing and Urban Development; CANTERBURY GARDENS COOPERATIVE, INC. and RIPPS REALTY, INC.,
Respondents.

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SAMUEL R. PIERCE, JR., SECRETARY OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner, Vernice Dubose, individually and on behalf of others similarly situated, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered in this proceeding on September 9, 1988.

OPINION BELOW

The opinion of the Court of Appeals for the Second Circuit is reprinted in the Appendix hereto, p.___, infra.

The prior opinion of the Court of Appeals is reported at 761 F.2d 913, vac. 487 U.S.___, 108 S.Ct. 890 (1988). The opinion of the District Court for the District of Connecticut is reported at 579 F.Supp. 937. Copies of the prior decision of the Court of Appeals and the decision of the District Court are reprinted in the Appendix, with copies of the five other reported District Court opinions in this case.

JURISDICTION

The judgment of the Court of Appeals for the Second Circuit was entered September 9, 1988. The Court of Appeals denied a timely petition for rehearing on November 4, 1988. This petition for certiorari is therefore due on February 2, 1989, and has been filed within the required time. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATUTES INVOLVED

The underlying action in this case involved United States Code, Title 12, §1715z-1(f)(3) and (g), the Operating Subsidiary Legislation. Attorney's fees are sought pursuant to United States Code, Title 28, §2412, The Equal Access to Justice Act. As both provisions are

lengthy, they are set forth verbatim in the separate Appendix.

STATEMENT OF THE CASE

Petitioners seek reversal of the decision of the Second Circuit Court of Appeals adopting an interpretation of a nationwide settlement agreement contrary to the holding of the Court of Appeals of the Ninth Circuit in Underwood v. Pierce, 761 F.2d 1342 (9th Cir. 1985), Appendix III at 284-85, which became final when the decision was affirmed in pertinent part by this Court in Pierce v. Underwood, 487 U.S.___, 56 U.S.L.W. 4806 (June 28, 1988). The result of the decision of the Second Circuit is to deny to class representatives in Dubose attorneys fees for a substantial portion of work undertaken with counsel in

Underwood, pursuant to a settlement agreement jointly negotiated and jointly administered by a committee of counsel in cases consolidated for settlement administration purposes.

Justice Scalia summarized the history of this litigation in Underwood, with which this case was consolidated for settlement administration purposes:

> This dispute arose out of a decision by the Secretary not to implement an "operating subsidy" program authorized by §212 of the Housing and Community Development Act of 1974, Pub. L. 93-383, 88 Stat. 633, formerly codified at 12 U.S.C. §1715z-1(f)(3) and (g) (1970 ed., Supp. IV). The program provided payments to owners of government-subsidized apartment buildings to offset rising utility expenses and property taxes.
>
> Various plaintiffs successfully challenged the Secretary's decision in lawsuits filed in nine Federal District Courts. See Underwood v. Pierce, 547 F. Supp. 256, 257, n. 1 (CD Cal. 1982) (citing cases). While the Secretary was appealing these adverse decisions, respondents, members of a nation-wide class of

tenants residing in government-subsidized housing, brought [Underwood] challenging the Secretary's decision in the United States District Court for the District of Columbia. That court also decided the issue against the Secretary, granted summary judgment in favor of respondents, and entered a permanent injunction and writ of mandamus requiring the Secretary to disburse the accumulated operating-subsidy fund. See Underwood v. Hills, 414 F. Supp 526, 532 (DC 1976). We stayed the District Court's judgment pending appeal. Sub nom. Hills v. Cooperative Services, Inc., et al., 429 U.S. 892 (1976). The Court of Appeals for the Second Circuit similarly stayed, pending appeal, one of the nine other district court judgments against the Secretary. See Dubose v. Harris, 82 F.R.D. 582, 584 (Conn. 1979). Two of those other judgments were affirmed by Courts of Appeals, See Ross v. Community Services, Inc., 544 F.2d 514 (CA4 1976) and Abrams v. Hills, 547 F.2d 1062 (CA9 1976), vacated sub nom. Pierce v. Ross, 455 U.S. 1010 (1982), and we consolidated the cases and granted the Secretary's petitions for writs of certiorari to review those decisions, Harris v. Ross, 431 U.S. 928 (1977). Before any other Court of Appeals reached a decision on the issue, and before we could review the merits, a newly appointed

> Secretary of Housing and Urban Development settled with the plaintiffs in most of the cases. The Secretary agreed to pay into a settlement fund $60 million of distribution to owners of subsidized housing or to tenants whose rents had been increased because subsidies had not been paid. The present case [and Dubose] was then transferred to the Central District of California for administration of the settlement."

487 U.S. at ___, 56 U.S.L.W. at 4807, Appendix II, p.___ (bracketed insertions added).

The settlement, jointly negotiated by counsel in Dubose, Underwood, Ross, and Abrams, was nationwide in scope, and was specifically made contingent upon approval of the identical terms by all four courts. Dubose v. Harris, 82 F.R.D. 582, 600-601 (D. Conn. 1979) (Paras 5(c) and 7 of Settlement Agreement), Appendix II at 149, 150. The Settlement and Agreement and Stipulation for Settlement ("settlement agreement") provided for oversight of settlement administration to be conducted

by a Committee of Counsel ("COC") consisting of selected counsel from the various cases. Dubose v. Pierce, 579 F.Supp. 937, 945 (D. Conn. 1984), Appendix II at 45.

When administration of the sixty million dollar nationwide settlement fund was substantially completed, plaintiffs in this case and Underwood submitted applications for attorney's fees under the Equal Access to Justice Act ("EAJA"), 42 U.S.C. §2412 et seq. The first determination regarding fees was made by the California district court, which found counsel entitled to fees for their work in connection with the initial litigation and settlement administration activities. Underwood v. Pierce, 547 F.Supp. 256 (C.D. Cal. 1982). James Sturdevant, one of the counsel in Dubose, who also served on the COC, initially petitioned for fees in

connection with settlement administration before the Underwood Court, which oversaw settlement administration activities. Dubose v. Pierce, 579 F.Supp. at 945, Appendix II at 47. In an unpublished order, the Court in Underwood dismissed that petition on the grounds that, even though his settlement administration activites had been undertaken before the Underwood court, jurisdiction over the application for fees remained with the Dubose district court, where Sturdevant first appeared as counsel. Id. HUD appealed the Underwood fee determination, which was affirmed in Underwood v. Pierce, 761 F.2d 1342 (9th Cir. 1985) with respect to the entitlement to fees under EAJA for settlement administration activities.

This Court granted HUD's petition for certiorari to address whether the Government's position in the litigation had been "substantially justified" and

whether the Ninth Circuit had properly identified "special factors" justifying an award in excess of the EAJA's $75-per-hour cap on attorney's fees. Pierce v. Underwood, supra, 56 U.S.L.W. at 4808. The Court affirmed the award of fees, but vacated with respect to the finding of "special factors" authorizing an enhanced award. Id. at 4812.

Dubose proceeded on a separate track in the Second Circuit. On February 7, 1984, the district court held, consistent with the decision in Underwood, that the HUD's position had not been substantially justified and that counsel were entitled to a fee under EAJA, notwithstanding a provision of the settlement agreement, negotiated prior to the enactment of EAJA, containing a waiver of attorney's fees from the settlement fund. Dubose v. Pierce, supra, 579 F.Supp. at 951, Appendix II at 58.

Unlike the Underwood decision, however, and despite his recognition that prevailing case law would normally authorize an entitlement to fees for settlement administration, he denied any recovery for settlement administration activities on the theory that a clause in the settlement agreement limiting settlement administration costs operated to bar an attorney fee award under EAJA for settlement administration activities, even though the explicit waiver of attorney's fees did not. Id. at 955, Appendix II at 64. HUD appealed the District Court's fee award and petitioners cross-appealed challenging, inter alia, the denial of fees for settlement administration activities.

On May 14, 1985, the Second Circuit reversed the district court's award on the grounds that HUD's defense of the case had been "substantially justified." Dubose v.

Pierce, 761 F.2d 913, 917 (2d Cir. 1985), Appendix II at 27. Petitioners filed a timely Petition for Cetiorari, which this Court granted; following its decision in Underwood the Court vacated the judgment and remanded to the Court of Appeals for the Second Circuit for further consideration in light of its decision in Underwood. Dubose v Pierce, 487 U.S.___, 56 U.S.L.W. 3893, No. 85-516.

On remand, the Second Circuit vacated its previous opinion and affirmed the District Court's determination that HUD's position had not been substantially justified. Dubose v. Pierce, Slip Opinion at 8, Appendix I at 13-14. It then noted its need to address the issues raised by petitioners in their appeal and, in a perfunctory fashion, affirmed without discussion the district court opinion. Id.

Petitioners filed a timely Petition for Rehearing, pointing out the inconsistency between the district court's decision with respect to settlement administration fees in Dubose and the Ninth Circuit's holding with respect to identical activities in Underwood. The Petition for Rehearing was denied without opinion in an order filed November 4, 1988. Appendix IV at 292.

REASONS FOR GRANTING THE WRIT

1. The decision below conflicts with the Ninth Circuit determination in Underwood v. Pierce, affirmed by this court in Pierce v. Underwood, in its interpretation of the consolidated settlement agreement.

If allowed to stand, the Second Circuit's opinion leads to the bizarre result that some members of a single Committee of Counsel, overseeing administration of a single settlement agreement, in cases consolidated for settlement administration purposes, will be fully compensated for their settlement administration activities under EAJA, while their brethren, with whom they have labored in litigation spanning more than a decade, receive nothing for the same work. Petitioners submit that proper application of collateral estoppel, as recognized in United States v. Stauffer

Chemical Company, 464 U.S. 165 (1984), should prevent this result by binding the United States Government to the interpretation of the national settlement agreement respecting settlement administration that became final with this court's decision in Pierce v. Underwood supra, 487 U.S. ___, 56 U.S.L.W. 4806, affirming in pertinent part the Ninth Circuit Court of Appeals decision in Underwood v. Pierce, 761 F.2d 1344, (9th Cir. 1985).

In opposition to the initial fee petitions presented to the district court in California, HUD argued that an award of attorney's fees was barred by the terms of the settlement agreement negotiated in the four consolidated class actions prior to the passage of EAJA. (The complete text of the settlement agreement is contained in the Appendix to Dubose v. Harris, 82 F.R.D. 582, 592-605 (D. Conn. 1979), reprinted in the Appendix at 133-159. HUD relied primarily upon the provisions of

Section 3(f) of the settlement agreement, relating to distribution of settlement funds, which provides that "None of the funds distributed may be used to pay attorneys fees." Id. at 594; Appendix at 137. HUD also relied upon Section 3(e), which provides for pro rata payment of claims if the settlement fund is too small to satisfy all claims (after deduction of costs of notice and administration) and return to the Secretary, to be credited to the reserve fund under Section 236(g) of the National Housing Act, as amended, of any settlement funds remaining after payment of all claims (after deduction of costs of notice and administration). Id. Finally, HUD cited section 4(d), which provides for payment by HUD of postage costs, its obligation to make a WATS line available to plaintiffs' counsel, and its obligation to reimburse Price Waterhouse (the firm the settlement designated as agent for

receiving and evaluating claims) for the cost of assembling and copying audits and reviews requested by HUD. Id. at 595, Appendix at 140. Section 4(d) concludes with the sentence "It is the intent of the parties that distribution of the settlement funds shall involve no other substantial costs or expenditures by HUD." Id. HUD argued that these three provisions demonstrated an intent to waive any attorney's fees payment from the settlement fund and that, because the fund was the only available source of fees when the agreement was signed, it effectively constituted relinquishment of all claims to fees. Underwood v. Pierce, supra, 761 F.2d at 1345, Appendix at 284.

The argument failed both before the California district court and the Ninth Circuit:

> The district court interpreted the agreement as precluding the payment of fees from the settlement funds. Underwood v. Pierce, 547 F.Supp. 256, 262 (C.D. Cal. 1982). It determined that Underwood's attorneys intended to waive such fees because "[w]hen the

> settlement was negotiated the common fund/common benefit doctrine provided the only realistic basis for a fee award, which plaintiffs' counsel agreed to forego since that could have reduced the amounts paid to low-income class members." Id. at 263. The court found, however, that the parties had no intent to preclude the possibility of a recovery of fees of EAJA. Id.

761 F.2d at 1345, Appendix at 285.

The Ninth Circuit agreed that Sections 3(e) and (f) of the settlement agreement did not purport to bar anything except a recovery of fees from the settlement fund itself. Id. In addition, it found no merit in HUD's argument regarding Section 4(d):

> Nor does Section 4(d) of the agreement in any way preclude an award of attorneys' fees. Attorneys' fees were dealt with exclusively in Section 3(f) of the agreement. Reading the agreement as a whole, it is plain that Section 4(d) was not intended to address the question of the availability of attorneys' fees at all, but was rather concerned with miscellaneous "housekeeping" expenses. We therefore conclude that the Secretary has failed to establish that the parties intended to waive all attorneys' fees attendant to the administration of the settlement agreement.

> We agree with the district court that the agreement does not foreclose recovery under EAJA for legal expenses for litigation and settlement administration."

Id. (emphasis added).

HUD pressed the identical arguments, with somewhat better result, in its second track in Connecticut. In addition to rejecting HUD's argument that its position had been substantially justified, and that its inability to predict at the time of settlement the passage of EAJA constituted a circumstance rendering payment of a fee unjust, the district court in Connecticut concurred with the California district court in finding that Sections 3(e) and (f) of the settlement agreement intended only to bar recovery of a fee from the settlement fund, and not payment of a fee under EAJA. 579 F.Supp. at 951, Appendix at 58. Without explication, however, the Connecticut district court accepted the argument that, notwithstanding its context, in a section devoted to payment for postage, a telephone line, and copying

costs, the last sentence of Section 4(d) served to rule out an EAJA award of attorney fees for settlement administration activities, "even though such fees might otherwise be proper." Id. at 955, Appendix at 64 (citing cases).

Petitioner's appeal of this determination was rendered moot in the first decision by the Second Circuit because it held that no fees were payable on the grounds that HUD's position was substantially justified. Dubose v. Pierce, 761 F.2d at 917, Appendix II at 27. On remand from this Court, however, it affirmed the district court's judgment regarding Section 4(d) without discussion. Slip Opinion at 10, Appendix Id at 17.

This case presents a clear example where "a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter . . . ." Rules

of the Supreme Court of the United States, Rule 17.1(a). The conflict between the Ninth Circuit decision in Underwood and the Second Circuit decision in Dubose goes to a significant provision of an identical instrument, resulting in radically different treatment of the claims of various members of the Committee of Counsel, resulting solely from HUD's ability to seek a "second opinion" on the same issue, in a second jurisdiction, involving parties in privity with each other. A grant of certiorari is appropriate to resolve the conflict.

2. **The fair administration of justice is frustrated if, following a single settlement negotiated in consolidated cases, the Government is free to seek a preferred interpretation of the settlement agreement in the various jurisdictions from which the consolidated cases arose, notwithstanding a final**

judgment adopting a contrary interpretation.

Although the underlying conflict involves the interpretation of a settlement agreement (albeit in consolidated class action lawsuits with nationwide effect) rather than the interpretation of a law of general application, the type of conflict present here could result in any federal litigation where claims in multiple jurisdictions are consolidated for settlement purposes. The important benefits to be gained by such consolidation will be frustrated absent clear direction for preventing the unraveling of such cases through relitigation of interpretations of the agreement in the various jurisdictions. Instantly, plaintiffs in the various class actions came together for the purpose of establishing a single, uniform settlement governing all claims throughout the United

States. The obvious goal of such consolidation is to serve the interests of justice through consistent and efficient adjudication of claims. Neither justice, efficiency, or consistency is obtained if, as here, one party to the consolidated proceedings has the opportunity to relitigate aspects of the agreement in each jurisdiction from which the consolidated cases derived. Yet this is the result if HUD is allowed the benefit of the ruling of the Second Circuit, notwithstanding the conclusive determination of that issue against it in the Ninth Circuit.

In the context of 28 U.S.C. §1407(a) transfers of multi-district actions for pretrial proceedings, Justice D. H. Ginsburg has noted that:

> A series of inconsistent appellate judgments is not a desirable outcome . . . particularly since the result in some cases might be to require renewed pretrial or trial proceedings. This whole course of case development, starting with divergent paths of appeal and ending with either

> conflicting or duplicative results, would clearly frustrate the primary goals of §1407(a) "to promote the just and efficient conduct" of multi-district actions.

In Re Korean Airlines Disaster of September 1, 1983, 829 F.2d 1171, 1180 (D.C. Cir. 1987) (D.H. Ginsburg, J., concurring).

It is appropriate to grant certiorari in this case to guide courts in the avoidance of such conflicts by giving appropriate preclusive effect to a final judgment interpreting a common settlement agreement in consolidated actions. In United States v. Stauffer Chemical Company, 464 U.S. 165 (1984), this Court held the doctrine of mutual defensive collateral estoppel applicable to bar the Government from relitigating in a different circuit an issue resolved against it in a previous action against the same party. 464 U.S. at 172. Although Stauffer Chemical involved defensive collateral estoppel, in which

Stauffer Chemical was a defendant seeking to avoid successive litigation by plaintiffs directed by the Government, and the application sought here is arguably offensive, in that petitioners seek to prevent the Government from reasserting a defense that was unsuccessful in the previous action, the distinction is without a difference in the context of a single settlement agreement negotiated in consolidated actions. Unlike United States v. Mendoza, 464 U.S. 154, 162 (1984), in which this Court ruled that nonmutual offensive collateral estoppel did not apply against the Government to preclude it from relitigating a issue resolved against it in a previous action, mutuality exists between the Committee of Counsel which negotiated the single settlement agreement at issue in Underwood and Dubose. As the Court recognized in Mendoza, "The concerns underlying our disapproval of collateral estoppel against

the Government are for the most part inapplicable where mutuality is present . . . ." Id. at 163-164. While application of nonmutual collateral estoppel in cases like Mendoza would result in "freezing the development of the law," Id. at 164, the Government has no legitimate interest or right to relitigate in successive forums issues arising under a settlement agreement it negotiated with multiple plaintiffs, acting in good faith in an effort to achieve a uniform agreement that would resolve all claims in a consistent manner.

Indeed, in Western Union Telegraph Company v. Commonwealth of Pennsylvania, 368 U.S. 72 (1961), this Court held that it would violate due process for one state to deprive an individual of property when the state lacked the power to protect the individual from a conflicting claim for the same property brought by another party not bound by the original determination.

Id. at 75. Constitutional principles may also be implicated where, as here, the obverse situation obtains: multiple plaintiffs, who have come together in good faith to negotiate a single settlement agreement for the purpose of achieving uniform and consistent relief, faced with arbitrary and inconsistent judgments resulting from the Government's ability to relitigate in successive jurisdictions its preferred interpretation of the agreement, notwithstanding a final determination rejecting its theory. Proper application of collateral estoppel avoids such concerns.

CONCLUSION

A writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Second Circuit so that the conflict between the Ninth Circuit and Second Circuit with respect to a single nationwide settlement agreement can be resolved, and so that this Court

can give guidance with respect to the important issue of the appropriate preclusive effect to be given to a final judgment interpreting a single settlement agreement negotiated between the Government and plaintiffs from different jurisdictions who have come together to negotiate a settlement agreement.

Respectfully submitted,

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